REMARKS

Claims 35-83 are pending in this application. Claims 1-34 were previously canceled in a preliminary amendment. The remarks below summarize several of the distinctions regarding the asserted prior art references U.S. Patent No. 6,343,272 to Payne et al. ("*Payne*") and U.S. Patent No. 6,636,834, to Schirripa ("*Schirripa*") discussed with the Examiner in an Examiner interview conducted at the United States Patent and Trademark Office on July 19, 2006. Reconsideration of the application in light of the distinctions discussed during the Examiner interview as well as the remarks below is respectfully requested.

Claim Rejections Under 35 U.S.C. § 103(a)

In the Office Action dated May 3, 2006, Claims 35-83 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Payne* in view of *Schirripa*. Specifically, the Examiner stated that:

> It would have been obvious to one of ordinary skill in the art to modify the index-linked life insurance product of Payne to include the provision that upon the occurrence of a predetermined event, if the amount credited based on the index-linked earnings is not equal to at least the annual guarantee compounded over the term, using funds from one or more reserves or a risk fund to increase the amount credited to be substantially equal to the compounded annual guarantee because Schirripa teaches using funds from a reserve or risk fund to fulfill the guarantee as is common in the annuity and life insurance field because it encourages clients to use the services and protects the financial interests of the insuring company and client.

(Office Action Pages 3-4). The applicants respectfully contend that such combination of the *Payne* and *Schirripa* references does not render Claims 35-83 obvious. For the reasons stated below, neither *Payne* nor *Schirripa* discloses "determining a hedged investment budget based at least in part on the projected annual fixed income yield and an estimated cost of the annual guarantee over the term."

Independent Claims 35, 50, and 68

Independent Claims 35, 50 and 68 of the applicants' pending patent application each require in some variation the use of an estimated cost of an annual guarantee when determining a

hedged investment budget. The specification of the applicants' pending application outlines the usefulness and benefit of utilizing an estimation of the cost of the annual guarantee when determining the hedge investment budget:

> "[A]n exemplary embodiment of the present invention contemplates that a historical analysis or other analysis method may be performed in order to more precisely estimate the cost of a certain annual guarantee. By more precisely estimating the cost of an annual guarantee, the insurance company is able to more precisely estimate the percentage of the crediting budget that is to be deducted as a guaranteed return budget for covering the risk associated with the annual guarantee."

(*See Clark* paragraph 44.) The applicants' respectfully contend that while *Payne* discloses the administering of index-linked annuities/life-insurance policies with legally required guaranteed return rates, *Payne* does not show an estimation of a cost associated with those guarantee return rates.

Briefly, the *Payne* patent is directed to a system intended for analyzing and managing a plurality of specified life insurance policies and annuity contracts on behalf of an insurance carrier. More specifically, the life insurance policies or annuity contracts depend on stock market performance in that the account value increase is determined as a percentage of the performance of a stock market index, with set caps and floors. The percentage is adjusted according to the yield on fixed rate assets at the end of each term. Similar prior art functionality is acknowledged in the Background Section of the applicants' pending application. (*See Clark* paragraphs 4-8.)

The system described in *Payne* manages the increased risk associated with participation in the stock market by periodically monitoring assets and liabilities during the term and determining the purchase and sale of stock options and other hedging instruments to cover the risks. As shown in *Payne*, specifically in the flowchart of FIG. 2 and described in the specification (e.g., *Payne* Col. 3), *Payne* teaches that the stock market participation amount is determined on a yearly basis based on a participation rate. Nowhere is it mentioned or discussed of the need to determine or estimate the cost associated with an annual guarantee. As a result, the use of an estimate of the cost associated with the guaranteed return rate to determine the appropriate hedged investment budget is not taught or suggested by *Payne*.

As stated in *Payne*:

> Periodically, the participation rate is adjusted in order to keep earnings as stable as possible. The accumulated profit on the block of assets is compared with the target accumulated profit. If the actual profit exceeds the target, then the participation rate is increased for policies with anniversaries falling within the period. If actual profitability is less than target, then the participation rate for new issues and rollovers will be decreased.

(*Payne*, Col. 5, lines 12-19). Such adjustments to the participation rate on a periodic basis teach away from the use of estimating the cost associated with a guarantee because, in *Payne*, the risk associated with having a guaranteed return rate is managed (at least in part) by the periodic adjustments made to the participation rate of its new and existing policies. Therefore, in *Payne*, the cost associated with the guaranteed return rate appears to be ignored. In other words, in *Payne*, the risk associated with the stock market investments not outperforming the guaranteed return rate may be mitigated (or increased) by the periodic adjustments of the participation rate after a previous terms performance is evaluated. In contrast, the claims of applicants' pending application require the use of an estimating a cost of the annual guarantee at the start of a term period, where the estimated cost of the annual guarantee accounts at least partially for the risk of the hedged investment not outperforming the annual guarantee. Therefore, while *Payne* may disclose an index-linked life insurance product having a guaranteed return rate, the *Payne* reference does not teach, suggest, or motivate the use of an estimated cost of an annual guarantee to account for the risk associated with having that guaranteed return rate.

The applicants also respectfully contend that no where in *Schirripa* does it teach or suggest "determining a hedged investment budget based at least in part on the projected annual fixed income yield and an estimated cost of the annual guarantee over the term." *Schirripa* is directed to an annuity system intended to allow transfers to or from a fixed annuity without discontinuity in the payment distribution to the annuitant. Additionally, the applicants respectfully contend that while the *Schirripa* reference does disclose, generally, the need for insurers to maintain adequate financial reserves to make future annuity benefit payments (see Col. 2, lines 14-15), *Schirripa* does not teach or suggest, among other things, the limitation that upon the occurrence of a predetermined event, if the amount credited based on the index-linked

earnings is not equal to at least the annual guarantee (or guarantee value) compounded over the term, using funds from one or more reserves or a risk fund to increase the amount credited to be substantially equal to the compounded annual guarantee (or guarantee value).

For the reasons stated above, neither the combination of the *Payne* and *Schirripa* reference nor the references individually teach, suggest, or motivate the limitation of Claim 35: "determining a hedged investment budget based at least in part on the projected annual fixed income yield and an estimated cost of the annual guarantee over the term." Independent Claims 50 and 68 have similar limitations that further specify the calculation of the hedge investment budget by specifying a deduction of the estimated cost of the annual guarantee. Such calculations are also not disclosed by *Payne* or *Schirripa* and the remarks above apply to those limitations as well. Therefore, for at least the above stated reasons, the applicants' respectfully assert that Independent Claims 35, 50 and 68 of the applicants' pending patent application are not rendered obvious by the combination of the *Payne* and *Schirripa* references and are in condition for allowance for at least the reasons stated above. Further, dependent Claims 36-49, 51-67, and 69-83 are allowable as a matter of law as depending from either independent Claims 35, 50 and 68, notwithstanding their independent recitation of patentable features.

Dependent Claims – 39, 40, 41, 43-44, 56-57, 61-62, 73-75, 78-79

The applicants' further contend that the features disclosed in at least dependent claims 39, 40, 41, 43-44, 56-57, 61-62, 73-75, 78-79, are not fully disclosed by *Payne* or *Schirripa*. In general, these dependent claims further expand on the determination of the estimated cost of the annual guarantee, the use of the estimated cost of the annual guarantee and/or the association of the cost of the annual guarantee with the risk fund, etc. None of this addition functionality is disclosed by *Payne*, *Schirripa*, or the combination thereof. For instance, Claims 39, 56 and 73 are not disclosed by the *Payne* or *Schirripa* reference, as there is no teaching or suggestion in either reference of an estimated cost of the annual guarantee that comprises an estimate of the funds for increasing the amount credited to the segment (or index-linked earnings) to approximately equal the annual guarantee compounded over the term. Moreover, Claims 40, 57 and 74 are not disclosed by the *Payne* or *Schirripa* reference, as there is no teaching or suggestion of historical analysis or back-casting to estimate the cost of the annual guarantee in

either *Payne* or *Schirripa*.

Claims 43, 61 and 78 are also not disclosed by the *Payne* or *Schirripa* reference, as there is no teaching or suggestion of determining the hedged investment budget by, at least in part, deducting from the projected annual fixed income yield a product spread and the estimated cost of the annual guarantee in either *Payne* or *Schirripa*. Additionally, Claims 41 and 75 are not disclosed by the *Payne* or *Schirripa* reference, as there is no teaching or suggestion in *Payne* or *Schirripa* of having the estimated cost of the annual guarantee comprise an estimate of the funds for increasing the index-linked earnings to approximately equal to the annual guarantee compounded over the term, taking into account various features of the index-linked insurance product.

Further, Claims 44, 62 and 79 are not disclosed by the *Payne* or *Schirripa* reference, as there is no teaching or suggestion of allocating the deducted estimated cost of the annual guarantee to the risk fund in either *Payne* or *Schirripa*. Additionally, in the Office Action Claims 44 and 49 are said to be disclosed by *Payne*, though no citation is given in the Office Action. Further, the Office Action itself says that *Payne* does not disclose using funds from one or more reserves or a risk fund to increase the amount credited to be substantially equal to the compounded annual guarantee.

CONCLUSION

The applicants believe they have responded to each matter raised by the Examiner. Allowance of the claims is respectfully solicited. It is not believed that extensions of time or fees for addition of claims are required beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR §1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 19-5029.

Respectfully submitted,

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